

Exhibit 22

Subject: Re: West Point Marina Amendment
Date: Tuesday, October 23, 2012 4:55 PM
From: John Bowers <johnb@bcdcc.ca.gov>
To: Adrienne Klein <adriennek@bcdcc.ca.gov>
Cc: Brad McCrea <bradm@bcdcc.ca.gov>

Adrienne,

A quick comment regarding Mark's complaint about "fishing" as an allowable public use of the public access area his permit requires him to dedicate. Fishing is a public access use that his permit specifically requires him to allow of, and accommodate in, the PA area. He is effectively seeking to get us to reconsider a requirement that is specifically contained the permit that he accepted.

In the absence of new information what Sanders is doing is taking up our time to argue something that he could and should have argued at the time his original permit was before the Commission. Many of Sanders' other arguments fall into this same category. Our regulations should prohibit this kind of time-consuming re-arguing of the terms and conditions of his permit in a manner similar to that in which the CCC's regulations do so.

John

On 10/18/12 7:23 PM, "Adrienne Klein" <adriennek@bcdcc.ca.gov> wrote:

I have modified the amendment pursuant to mark's requests and our meeting.

Since we did not go over all issues, I think we need to carve out more time to do that. Assuming so, how about Tuesday afternoon after Stephen's lunch or at the end of the W meeting.

In the meantime/in lieu, please review the attached revised amendment and notations to mark's memo that I propose we present to him along with the draft amendment.

I have logged in over 7 hours on this matter in the past two days and you have each logged in 1.5 hours. One up Mark.

Subject: Re: Our Discussion of 10/12/12

Date: Thursday, October 18, 2012 4:04 PM

From: Brad McCrea <bradm@bcdca.gov>

To: Mark Sanders <mark@westpointharbor.com>

Cc: "moc@paspeech.com" <moc@paspeech.com>, Kevin Stephens <kstephens@kevinstephensdesign.com>, Adrienne Klein <adriennek@bcdca.gov>, Ellen Miramontes <ellenm@bcdca.gov>

Mark,

We have looked over your "list of problems" and agree with you that many of the changes make sense and can be accommodated. A few, on the other hand, may not be able to be accommodated. We can discuss this further.

Before we proceed, however, we need to know whether you have any other revisions or corrections to Amendment No. 5. If you do not, we will prepare a revised permit for your consideration, at which point it would be best for you to come to our office so that we can discuss the changes.

We agree with you that we must reach resolution of this amended permit. There is urgency to complete the public access. Therefore, please confirm that the list that you emailed last Friday is the final list of issues and that if we resolve the items on that list, you will execute the permit.

We look forward to hearing from you.

Brad

Brad McCrea

Director of Regulatory Affairs

San Francisco Bay Conservation and Development Commission (BCDC)

415-352-3615 office

415-385-2954 mobile

On Oct 16, 2012, at 11:58 AM, "Mark Sanders" <mark@westpointharbor.com> wrote:

Hello Brad,

and thank you for taking the time to talk last

landscaping, irrigation and utilities in the west, and bioswales, paths and utilities to the east.

Our last communication was Ellen to Kevin (9/11/12) with additional comments on the landscaping construction drawings, and she indicated there were a few more to come. Once these drawings are approved we can restart construction, including fences so the City will allow public access around areas secured for safety reasons.

Brad, in the past Andrea Gaut often authorized changes by letter, and "caught up" later (in Amendment 3). Perhaps this will work again so some work can go forward? Kevin and Ellen agreed to temporary safety fencing to allow more public access; agreed on the type of fence; and agreed existing trees and paths will remain and new paths facing Westpoint Slough will be 12 feet. A letter authorization for these items would surely speed things up.

Best regards,

mark

Subject: Fwd: Discussion of errors and omissions, BCDC amendment no 5.

Date: Friday, October 12, 2012 2:37:40 PM Pacific Daylight Time

From: Brad McCrea

To: Adrienne Klein, Ellen Miramontes, Steve Goldbeck

Adrienne,

In this heaping list of corrections that Mark has prepared, is there even one item that is worth spending our time on?

We can't allow Mark to get us to spin our wheels. I'm tempted to tell Mark that the permit is the permit -- sign it or we'll elevate the enforcement. On the other hand, if there is something in this list that makes sense, which I doubt, let me know.

Brad

Begin forwarded message:

From: Mark Sanders <mark@westpointharbor.com>

Date: October 12, 2012 3:16:14 PM PDT

To: Brad McCrea <bradm@bcd.ca.gov>

Cc: Mark Sanders <mark@westpointharbor.com>, <moc@paspeech.com>

Subject: Re: Discussion of errors and omissions, BCDC amendment no 5.

OK Brad,

I continue to work on the list of errors and omissions and suggested language to make the permit correct and consistent. Attached is the list of items I think are simple errors easily fixed. Its a draft but mostly right I think.

Much of the problem is the "authorization section", "Special Conditions" section and "Findings and Declarations" section treat each of the 34 permit items differently, and some sections conflict. In other cases some sections were revised by amendment but another left unchanged.

There are a few items I think will be controversial and we can talk about them when you call. Its a tedious process, but worthwhile to get it right once and for all.

mark

Look at 35 day letter
in 2010

Schedule of Errors and Omissions Amendment 5 of Westpoint Harbor Permit (10/22/12)

Simple Errors

(Conflicts in amendment 5 easily corrected and which I believe are not controversial)

Page 2 item 13. Should read "one" restroom, not three. This was changed by letter from Andrea Gaut in 2006 as in excess of need. Correctly shown on page 3 item 19, but missed here. *OK*

Page 4 item 4. The permit specifies fencing between the boathouse and the haul-out on the east end. The boathouse was moved to the west end in amendment 3 at the request of Steve McAdam, so a separating fence no longer makes sense. It can be corrected to "Install, use and maintain fencing or other means to protect public safety at the boat launch and future haul-out and boathouse facilities". *?? How is this different? less clear? want clarity*
** Fencing remains 4ft "at the haulout" not around ramp*

Page 5 first para. Line 6, delete "covered berths" as well as "69,440 of covered boat docks". This was previously removed from the permit (no market demand). *OK*

Page 12 item c. Delete "covered berths" already removed from the permit. *OK*

Page 11 item 11. Line 5 should read "east" past permittee property, not "north". East means the path runs into the Bay. *Lowest? where?*

Page 1 item 3. Average depth is 15.3 feet, not 15 feet. A small error but experience shows it's necessary to correct all errors to avoid future misunderstanding. *22. don't know where this is*

Page 3 item 4. The building design as approved by BCDC is 2,900 sf not 3,500 sf. To correct, change to "construct, use and maintain a harbormaster's building no larger than 3,500 sf..." *OK*

Page 3 item 7. Delete second part calling for fencing along the southern property line and insert "Install and maintain a supportive buffer between the project site and the Cargill Salt Pond to prevent access into the salt ponds". This fence was replaced by a buffer setback as agreed by Andrea Gaut and Redwood City in 2006 and as noted on page 4, item D. (Source is DFG letter and EIR, which also allows buffer to substitute for a fence which DFG considered undesirable). *OK*

Move the "...fence along wetland area at east end" from phase 1b to phase 2. The fence protects a small wetland area at the east end of the future boatyard. It is only practical to build the fence when construction in the area ceases, a path can be installed and the City allows access. Currently the area is raw mud being graded and compacted. *? does this mean #7*
OK?

Page 13 item 2. Delete "small concrete rubble". Changed in 2006 in cooperation with the Army Corps and corrected elsewhere in this permit. Change is required for two reasons: need to

provide rip rap without adding load to a failed area, and need to provide a smooth landing area for boarding docks associated with the boat ramp (regular stone would damage bottom of the docks).

The permit emphasizes "minimum amount of fill" with rip rap, and suggests "investigate alternative measures to provide shoreline protection with the aid of a coastal engineer". The result was "pea gravel" rip rap (not yet installed).

Page 14 item 1. Delete "no more than 5 MPH", and insert "no wake zone". Most powerboats and sailboats in the 20 to 50 foot range have "displacement hulls" for which 5 MPH is near top speed and would generate maximum wakes. Typically "no wake" means "dead slow", which is about 3 MPH (minimum for steerageway). It is a mistake to equate wake size with speed of a vessel, since there is little correlation.

Page 17 item 5. First line should be corrected to show 42 liveaboard boats (10% of 416).

Page 30 para 5. Page 17, item 6 Q correctly removes the prohibition of personal watercraft in a public facility, but page 30 still includes the condition and should be removed. It also incorrectly states the permittee agreed to the condition--it was protested in 2003 as illegal, as confirmed by DBW.

Page 30 para 5 line 1 incorrectly states "...buoys 100 feet from Greco Island" and "buoys down the centerline of Westpoint Slough". This section confuses channel markers, refuge signs and no wake signs. It is correct in other parts of the permit and should state "The permittee has agreed to place and maintain signs along Greco Island..."; "install and maintain channel markers in Westpoint Slough", and to insure no wake signage or buoys are placed in cooperation with the Port of Redwood City, DFW, USCG and NOAA".

The source document was a letter from Clyde Morris at FWS, and mitigation measures are identically stated exactly. Morris corrected the error in cooperation with the USCG, Port of RWC and NOAA. Signs on the island, normal channel markers and no wake buoy are in place.

Old Errors

These errors are in the original 2003 permit.

Page 2 item 14. This authorizes preparation for parking and roadways and correctly notes "not all will be done in Phase 1a". But later it states "a 604 space parking lot" will be complete in Phase 1b. This is incorrect (and impossible) because multiple parking areas are associated with each phase as shown on the DRB package and construction drawings. Phases 2 and 3 are not yet designed so final parking locations are undetermined (and there is no need for boatyard and retail parking before those facilities exist). Also there is no road access, and a second road crossing to PSC is anticipated but not yet allowed. It will in part determine parking in phase 3.

??

so is it
pea gravel
or
concrete
robbles
(106?)

ok
What about
about 300?

Take out approx.

ok

ok

ok

What is known is the total amount of parking spaces in with each phase. It is specified on construction drawings and legal filings made to San Mateo County.

The paragraph should ^{you} state "Construct and install aggregate base to allow for settlement 179 parking spaces to support Phase 1a. During Phase 1b an additional 112 parking spots and a 30-space vehicle and boat trailer parking lot is authorized. All 321 parking spaces are to be asphalted by the end of Phase 1b". "The remaining 283 parking spaces and associated roads will be constructed as part of phase 2 and 3". This is consistent with the construction phasing schedule, DRB and Construction drawings, and county legal instruments. OC

Bay Trail
Page 2 item 15. Should read "10-foot wide path". The path was changed to 10-foot DG during three DRB meetings in 2006. The reason was twofold: (1) insufficient room for wider paths without sacrificing the bioswales around a majority of the marina basin, and (2) to comply with mitigation measure 29 (of 48) required by the EIR (i.e. match PSC landscaping and site furnishing plans), and Bay Trail specifications. It is practical to make 12 foot paths along both peninsulas facing Westpoint Slough. The remaining area (west side) will be the boardwalk which is 15 feet wide. All other areas are constrained by the levee width. * keep it

cleanup to make clear overlooks
Page 2 item 15. "Overlooks" should be changed to "overlook" (singular). Only the west overlook can be constructed in phase 1; the eastern overlook(s) and paths past the launch ramp are part of phase 2. This is for practical and safety reasons as agreed with staff and the City. Can we authorize different widths in different places

you have 14?
As in "page 2 item 44", this section correctly states paths will not be complete in phase 1a, but incorrectly states all paths will be complete in phase 1b which is impossible. It should state "Phase 1 and Phase 3 (retail) paths will be constructed in phase 1b with fencing to comply with local ordinances", and "Phase 2 paths and overlooks will be built as part of phase 2". → there are 2 overlooks at East

ask him
This is correctly represented on page 32, para 6, which says "Phase 1b will complete the public access associated with the marina slips", and is consistent with the phasing schedule and drawings provided to the DRB. (See July 10, 2006 letter to Andrea Gaut). where is fencing? what ordinance

Page 2 item 17. Delete State Lands. FWS has jurisdiction on the refuge for signage. The source document is a Clyde Morris (FWS) letter and the EIR which correctly state this. State Lands also deferred to DFG. SCC is prop owner

Page 3, item 18. "Channel markers" and "No Wake Zone" signs are different. This should read "install, use and maintain channel markers in Westpoint Slough from the main Redwood Creek channel to the entrance of Westpoint Harbor in cooperation with the Coast Guard and NOAA". (Channel markings are controlled by USGS, NOAA, and the Port of Redwood City in the federal port channel). This problem repeats in other areas.

Change to "No Wake Zone marker(s) are to be placed and maintained at the entrance to Westpoint Harbor and at the channel entrance to Westpoint Slough" in cooperation with the Port of Redwood City". Westpoint channel entrance is the Port of Redwood City's jurisdiction

keep no wake in slough in cooperation ok

and the Port maintains the "no wake" buoy at the entrance to the navigable channel. No Wake signs at the Westpoint Harbor entrance are fixed and installed by the property owner.

with not requirement

Page 4 item 1. Should read "Construct use and maintain boatyard facilities that **may** include two haulout areas...." Descriptions of phases 2 and 3 are illustrative only (as requested by Redwood City) and no design exists. The commission *authorized*, but did not *require* speculative improvements such as a boatyard, restaurant, marine store, fuel dock, etc.

ok so not built (design) yet?

check w/ other

Page 4 item 2. Language is correct but should include "and remove approximately 800 lf of paths in the same location as the boardwalk". This is because the temporary paths for dock access will be covered up by the boardwalk.

ok

leave it

Page 7 item 1. Delete "fishing". For safety, security and health reasons, fishing is not allowed in the marina and is formalized in the "Westpoint Harbor Operations and Management Manual" provided in May 2007. The Marina Recreation Association (MRA) provides BMP's and standard forms to the marina industry, and their standard language includes "fishing, cleaning of fish or swimming, scuba diving or snorkeling is prohibited on marina premises".
→ don't cast into basin.

No fishing? Public access amenity. leave it

4 spaces in 2 & 3

Page 8 item 4a. This should read "eight signed parking spaces". Eight spaces are contained in parking areas of Phase 1. This is shown on drawings approved by BCDC (Andrea Gaut November 2006 Permit Compliance Checklist) and recorded with San Mateo County. Additional signed spaces are in phases 2 and 3. Signs are painted on the spaces in accordance with City requirements, matching Pacific Shores.

so move to phase 2?

have improvements so when we break up 4b - some built some solid date

Page 8 item 4. Amendment 3 stages construction in a practical sequence, and a schedule of events was provided to the DRB to illustrate it. The sequence is correctly reflected in the "Authorized" section of the permit, but the "improvement within the total public access area" section of the permit was not. Delete "Prior to the use of any structure" and insert "included as part of Phase 1B".

why not prior to use?

these are already to be installed in 1b

I will provide staff with a set of photos showing stages of construction since 2006. Phase 2 and 3 areas have been under tens of thousands of cubic yards of mud which was being excavated, dried and compacted until 2010 since the marina was flooded. At the time underground work began over 100 tons of rip rap and baserock were produced on-site by two large rock crushing machines which occupied much of the phase 2 area (the rest of the area was for drying mud too). This was as planned and presented to the DRB as part of slide show. And was approved in the first meeting. The highlighted areas on the DRB drawings show areas of authorized construction since phase 2 and 3 were involved with earth-moving.

what does this have to do w/ access

whenever comes first

Page 8 item 4a. Please add "future connections to adjacent properties". We do not yet have permissions for all the connections.
→ Mean to 2

staying

As already noted, delete language regarding paths wider than 10 feet. Along the main E-W road paths wider than 10 feet are not possible without removing bioswales; changed by the

keep connections

DRB in 2006. We have agreed to 12 foot paths in areas facing Westpoint Slough (east and west side of harbor entrance) where it is possible to make wider paths.

then we can authorize condition rest.

Page 9 first line. Change to "overlook" (singular). Only one overlook in phase 1 the rest are in phase 2. Move belvederes and special features constructed in phases 2 and 3.

Page 8 item c. Add "signage indicating the guest berth nature...in accordance with Department of Boating and Waterways requirements". This is required by DBW.

Delete "bilge facilities". This is not legal or enforceable--boats have no bilge water capture capability and automatic and manual bilge pumps ("dewatering devices") are a USCG requirement and necessary to obtain insurance. California does not allow bilge (salt) water to be captured in pumpout systems. In 2004 BCDC issued a policy change reversing its position on automatic bilge pumps as unenforceable.

Page 9 item f. This section adds phase 1c which doesn't exist and conflicts with all phasing documentation. Change to "as part of phase 2".

Page 8, 9, and other locations. Delete Phase 1c. There is no construction phase designated 1c in our plans, and it conflicts with the construction phasing schedules in our permits.

Page 10 first sentence. Remove "prior to the use of any structure", and insert "as part of phase 3 construction". As in earlier phases, it's impossible to open all amenities before use of any structure--many amenities are in fact part of the structures. Moreover, build-out is not all-at-once (a restaurant may be built first for example), and paths and building set-asides for public access cannot be created in advance of the structures). The previously noted photos clearly show this.

Page 10 item 5. Change to read "remove any encroachments except as legally required by another agency such as the Fire Department and PG&E for services". The fire department and PG&E both require items located such that they slightly encroach in the path.

Page 12 item C. Delete "covered berthing"; "path surfaces" were completed in Amendment 3.

Page 14 item H and I. (Buoys and channel markers). Source documents are from Dept of the Interior, Port of Redwood City, Citizens Committee to Complete the Refuge, and DFW. All are separately included in EIR mitigation measures ("establish a no wake zone"; "limit channel width with buoys", "install buoy system 100' from Greco Island to discourage unauthorized entry"). BCDC permit melded the three separate requirements, creating multiple errors.

"No wake signs" instead of buoys is OK but "to delineate the center of the channel" is wrong. Channel center buoys are rarely used, and never in narrow channels. "Port and starboard channel markers" are used throughout the Bay and inland waterways of the USA (Dutton, Chapman). So channel markers are different from no wake markers. Also "for adequate draw"

2.2
Too on Marina

Get a date here will be done

Can build structure can't use until AP.

→ Rst in Island change date.

→ So that Phase 2

Simultaneous Why not?

what items?

→ no ask Ellen → ok

ok

is incorrect terminology. "Draw" and "draft" refer to vessel depth requirements, not channel depth.

Suggest the following correct language to comply with USGS, FWS, Port of RWC and published NOAA charts: "Permittee shall install navigation channel markers in Westpoint Slough in cooperation with USGS and NOAA", insure "no wake" signage or buoys are placed in cooperation with the Port of Redwood City and USCG", and "the permittee shall install and maintain signs along Greco Island in cooperation with US FWS informing the public that public access to...the refuge is prohibited".

OK
Channel
Markers
→ delineate
depth
OK

Line 5. Delete "100 feet from the salt marsh". In-channel signs are not allowed by USGS and placement at edge of salt marsh was required by FWS. As noted above, this line should say "a sign system along the edge of Greco Island in cooperation with Wildlife Refuge Manager (USFWS)". These were approved installed years ago and reported to Steve McAdam.

OK

Page 16 item 2. Delete gray water and bilge water. Sewage discharge is prohibited from boats, but gray water and bilge water are not. Boats have no means to capture gray water (hence use of bio-degradable soaps), and both automatic and manual bilge pumps are required on vessels over 26 feet for safety and insurance reasons. This prevents pollution caused by sinking.

???

→ Clean & Green Boating Coastal CC VINUM 415 904-6905
This is consistent with standards established by the Department of Boating and Waterways, as required in page 16 item 1.

Page 16 item 3. Pumpout facilities are provided throughout the harbor, and waste oil disposal is provided by Sequoia Yacht Club. Because of the close proximity, the club was deemed to satisfy the oil disposal requirement. Change "install" to "insure that convenient waste oil disposal is available".

Should we require him to install

NO
Condition
satisfied
by POP

Page 16 item 6. The intention is good but language is not. "Onshore sewer lines" were found to be a major problem decades ago: permanent connections mean boats never leave there slip, and worse such connections are pressure-fed. When a failure occurs at any boat (often because of wave action), all sewage from all boats is pumped into the Bay. Modern systems use vacuum which cannot leak into the Bay, and allow easy movement of vessels. Delete "onshore sewer lines" and add "sewage containment means at the slip".

???

what does
he want
to do.

This also applies to page 17 item 6 which repeats.

Page 17 item 1. Delete "no houseboats" and substitute "no floating homes shall be moored in the marina". This is corrected elsewhere; houseboats are seagoing vessels able to move and navigate and distinguished from "floating homes" which are not.

NO

Page 17 item 1. Delete language requiring identification of 10% of berths (with dedicated sewer connections) as liveaboard berths. In Westpoint every slip has full accommodations for liveaboard vessels including sewer--there are no "dedicated liveaboard slips". This was

→ No dedicated
sewer connect

→ ??? Where
is this language

discussed and approved during the 2006 DRB meetings, and the system is as shown drawings issued in 2006. The reasons are common sense: it's far better to have universal pumpout for all boats: marinas have flexibility to located boats in appropriate-size slips for optimal distribution; liveaboard boaters have the ability to change locations within a harbor (as when they move to a different vessel; and universal capture means a cleaner Bay.

does not talk
about
dedicated
slips
convenient
and adequate

Page 17 item 5. Redwood City has no codes regarding liveaboard boats and provided two letters to BCDC stating this.

ok great
stays in

Page 18 item V. "hold Harmless agreement", permittee cannot indemnify BCDC if permit conditions violate City safety codes and requirements.

nothing left.

?? ? ?

Permit Changes. The following new changes in the permit are problems.

Page 2 item 10. Delete "after the fact". The slope failure occurred in 2006 just before flooding as a result of contractor error. It was not corrected until 2011 after geotechnical and civil engineering analysis showed it should be left to stabilize, and later to install small rip-rap to limit further slippage (see photos). This was communicated to BCDC and other agencies and well understood, and shown on the construction drawings.

So it
wasn't
been
placed yet?
OK

It's important to note the small rip rap has *not yet been placed* and the area remains exposed raw mud except a small test area at the east end.

Such a change is accommodated in permit, which encourages "reduced fill" (less than the 3 feet of rip rap) and to "investigate alternative forms of rip rap with a coastal engineer" which we did with a specialist from UC Santa Cruz).

Page 4 item C. Completion of the project was extended to August 15, 2014. However BCDC halted construction in 2011 while allegations were being discussed, and realistic construction timetables should be pushed out a like amount.

★

OK
- Time limits

Page 12 item 14. Delete the new condition that "guest berth docks shall remain open during daylight hours to the public" as illegal unenforceable. Public viewing of the boats and harbor is accomplished with decks with handrails at the top of every gangway, as well as overlooks for the boatyard and launch ramp. This provides public viewing of the harbor without compromising safety and security on docks which are inherently dangerous (see photo) and shown on the dock drawings.

???

Harbor

★

Leave language or have it be open.

Visitors are often unfamiliar with boating, dock hazards, and harbor rules and regulations. Marina tenants are familiar with these hazards, well-insured, and demand a level of privacy and security. A survey of Bay-area marinas provided to staff shows every harbor created in the last half century has security gates, and letters forwarded which show insurance is unavailable without gate security, and comments from the DBW and other experts that it would be irresponsible for any marina to allow unsecured access to docks and boats.

The Marine Recreation Association, Dock Captains and Harbormasters of California, Recreational Boaters of California and the Department of Boating and Waterways strenuously object to this idea as unworkable.

As a new marina we could not compete without gate security in an environment where every competitive marina offers gates.

Page 24 last para. Correct language to "filling of 23.4 acres of pond", not 25 acres as shown.

Ok

Page 32 "amendment No. Five". This new condition does not make sense and the first paragraph is incorrect and should be deleted. It states "public access improvements required by Phase 1b (which is still in process) ...were to be installed before the marina was initially occupied with boats in August 2008..." This is a repeat of the same error introduced in Amendment 3.

which new condition?

The purpose of Amendment 3 was to allow the harbor to open (phase 1a) with minimal amenities before phase 1b was started, and is correctly shown in para 6 of the same page (see sequence of photos showing this is impossible). Amendment 3 moved two buildings, authorized the Cargill buffer, pouring of the boat ramp before flooding, and phased the project to accommodate continued site preparation (excavation, conditioning, rip rap placement, underground utilities) while the marina commenced operations.

?
Does he think public access done after 1b?

Importantly, the DRB drawings show boat ramp installed but not operational until phase 1b, showing the intent to install phase 1b amenities as part of phase 1b, not in advance of 1b.

Phase 1a authorized me to "construct three docks, utilities, rock roads and paths to support these first docks" and shown highlighted on the DRB presentation. Source documents include correspondence with Andrea Gaut of July 10, 2006, clearly indicating the intent, unfortunately paragraph 1 item 4 page 8 was not corrected and triggered multiple errors. Page 32, para 6, states "amendment 3...allows installation and use of three docks and only the layout of and rock for public access paths as phase 1a. Phase 1b will complete the public access associated with the marina slips".

Page 33 para 2. Correct first line to show "installation of fences around areas restricted for safety and security reasons by Redwood City" (there is more than one area and more than one fence).

where are fences?

?? Is Redwood City installing the fence.?

Delete "because permittee is unwilling to make the site available". This is false and insulting. I conform to a Redwood City requirement to keep construction areas closed until they deem it safe. The City has stated this in writing to BCDC, including photographs showing open trenches and construction hazards dangerous to the public. The warning signs have been in place since 2004. The City suggested fencing to allow additional paths to be opened.

October 31 is no longer possible as a fencing deadline due to long delays. Now that rain has made the area impassible, it may be spring before weather allows the ground to dry and permit construction equipment to operate.

??

Additional path crossings staff requests to be installed on neighboring properties are not yet approved by those landowners.

Page 33 para 2, Change to "...installation of fencing around future phase 2 and 3 construction areas for safety and security reasons". Delete language regarding vandalism; while this has been a problem the main reason is public safety.

vs vandalism a public safety concern?
add public safety? why does it matter

The new condition also states "the amendment (to allow fences so the paths can be safely opened) does not resolve "enforcement action". If so there is no reason to install fencing and the harbor will comply with the City's order to close the area for safety/security.

Ok but clear enforcement

Page 33 para 3. This paragraph has numerous errors, mostly the same as previously noted.

what periods BDC permit

- There is no phase 1c and cannot be added without materially altering all our permits
- Compacting the east end of the site was not "delayed due to shortage of fill material". It was paced by the speed of the dewatering (wicking) process; and the need to spread, dry and compact Bay mud excavated from the basin after flooding (2006-2011). While planned for one year, it took three years to excavate the basin. The drying area diminished as the basin increased, and in two years rains continued through June resulting in a very short drying season (longest winter in 50 years!)
- The wicking process included "settlement plates" to measure the rate of settlement until completion. Because wick spacing in phase 3 was larger (because the area did not need to be dewatered as fast as phase 1), the dewatering process took longer in this area. Only when settlement reaches 90% can construction activities take place, and as last as fall 2012 the contractor experienced difficult wet areas needing more time to stabilize.
- Its rip rap that *has* been limited by availability of recycled concrete, almost zero due to the slow economy. Rip rap has been accumulated in the phase 3 area (where paths eventually go), and installed when material, equipment and weather allows. At this point most of the harbor is complete, and about 30 % of the east end remains.

So what should it say?

↳ stuff in 1b

who cares is another year needed?

??

???

Page 33 para 4. This too is incorrect. Because Westpoint Harbor is a "big boat" harbor (40 to 120 feet) it was soon clear that shoreside restrooms and showers see little use. This because large vessels have multiple on-board facilities, and pumpout at every slip means on-board facilities are more inconvenient. It was for this reason restrooms at every gangway didn't make sense and was cancelled in amendment 3. (Gangway restrooms/showers are on the marina side of the gates) It was not transferred to phase 3.

OK

↳ public restrooms
↳ says nothing about showers or pumpouts

The need for a public restroom in the retail area remains, and since the boardwalk is only 600 feet long one is sufficient, in addition to facilities such as a potential restaurant and yacht club.

The last line in paragraph 4 is also wrong. The 10 foot path is in accordance with our EIR conditions, construction drawings, and changed to 10' from 12-15' by the DRB. Importantly the path will be displaced by a boardwalk which is 15 feet wide, as is correctly shown on the DRB drawings.

that doesn't mean it's wrong? Just means he needed to provide proper width.

Page 33 para 5. Incorrectly states "modifies...no wake zone...replaces buoys with signs pursuant to requirements of FWS..." As noted before, this confuses no wake, refuge and navigational buoys.

ok

Correct language would be: "Amendment 5 modifies special condition....by replacing refuge buoys with signs pursuant to the requirements of FWS to alert boaters..." (remove reference to no wake). "Changes requirement to sign and mark with buoy(s) in cooperation with the Port of Redwood City and USCG to indentify Westpoint Slough as a no wake zone" (removes incorrect 5 MPH. Remember, 'no wake is not particularly related to a speed, and varies by vessel.

A planning speed boat could go 30 MPH without creating a wake, while a tugboat could create a damaging wake at 5 MPH.

Changes in Intent

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What causes the biggest problem is language counter to the intent of Amendment 3. In fact there is only one practical way the harbor site preparation and construction could take place, and this was discussed at length with the DRB resulting in Amendment 3. Amendment 5 requirements are technically impossible as the photos illustrate.

DFW, City and other requests during the EIR were carried into the BCDC permit verbatim. Some conditions were changed as provided in the permit (working with relevant agencies) and BCDC was involved with these changes. This is easy to show and as is the impracticality of the permit language on the issues of buoys and signs in the channel.

In 2001 during a series of all-agency meetings, Redwood City asked Westpoint Harbor to project potential future elements of the harbor to avoid "creeping development". This is how the boatyard, dry stacker building, restaurant, yacht club and other retail facilities became part of our permits: the intention was to authorize these possible items in the permit, but not *require* them. This is correctly shown in the "authorized" section of BCDC's permit (pages 1 through 5). However, the "special conditions" show these as *required* even though the need, design and economic practicality is not yet known.

Page 31 para 3. "Salt pond jurisdiction". This was argued at length at the time the commission voted on the marina project, and the permit was modified to change this to an opinion.

Cargill Salt Company states that records going back 100 years show pond 10 was never used for solar evaporation of Bay water in the course of salt production, and has never been subject to tidal action. They insist it does *not* satisfy the criteria for salt pond jurisdiction.

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Moreover, most of the salt ponds are Williamson Act land (ag preserve). Pond 10 is excluded from ag preserve since it was never used except for chemical storage. Interestingly it was zoned "heavy industrial" before the marina, in part because it was the site of the Portland Shipbuilding Company, which built large cement ships for the government from 1900 to about 1916.

Page 23 para 1. This asserts fairways are *"so frequently occupied by boats that they may not be considered open water"*, and *"the commission believes that the fairways provide some benefit but not as much as open water"*.

BCDC documents state *"The commission does not make a finding regarding whether the boat slips, fairways, or other 'heavily used water areas' constitute open water"* (p24 P1), and P24 line 8 correctly excludes fairways in the calculation of open water, conflicting with p23 P1.

I found no data to support this assertion regarding fairways and conducted a survey for harbors in the Bay. We found:

- Fairways are occupied by boats transiting to and from their berths only **0.069%** of the time (about one minute per day).
- An average boat of 50 feet occupies **0.0022%** of the total fairway area (fairways are 1.5 times the boat length).
- Taken together, the "fairway fill" caused by boats is **0.00334%** of total fairway area in a 24-hour period.
- This means **99.996%** of the time a fairway is entirely open water--hardly a "heavily-used water area".
- By this definition most of the Bay and Delta would fail the BCDC criteria for open water, and even *seabirds* could exceed boats as "fill"--and they won't use the pumpouts!